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UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

In re	)	
	)	Bankruptcy Case
STREAMLOGIC CORPORATION, a	)	No. 97-32984DM
Delaware corporation formerly	)	
known as Micropolis Corporation,	)	Chapter 11
	)	
Debtor.	)	Consolidated Adversary
	)	Proceeding Nos. 98-3166DM.,
NORTH AMERICAN TRUST COMPANY,	)	98-3291DM and 98-3413DM
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
STREAMLOGIC CORPORATION,	)	
	)	
Defendant.	)	
	)	
DISTRIBUTION AGENT, SUSAN UECKER	)	
For the Estate of STREAMLOGIC	)	
CORPORATION, a Delaware Corporation	)	
fka MICROPOLIS CORPORATION,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
STREAMLOGIC CORPORATION	)	
INDEMNIFICATION TRUST, dated	)	
March 29, 1996; et al.,	)	
	)	
Defendant.	)	
	)	
NORTH AMERICAN TRUST COMPANY as	)	
Trustee of the STREAMLOGIC CORPORA-	)	
TION INDEMNIFICATION TRUST dated	)	

1 March 29, 1996, )  
2 )  
3 Plaintiff, )  
4 v. )  
5 DISTRIBUTION AGENT, et al., )  
6 Defendant. )  
7 \_\_\_\_\_ )

7 SUPPLEMENTAL MEMORANDUM DECISION  
8 REGARDING MOTION FOR SUMMARY JUDGMENT

9 I. INTRODUCTION

10 On December 15, 1999, this court held a hearing on the motion  
11 for summary judgment filed by North American Trust Company  
12 ("NATC") in the above-referenced consolidated adversary  
13 proceedings. On December 28, 1999, this court issued a memorandum  
14 decision indicating that it would grant summary judgment in favor  
15 of NATC with respect to certain fraudulent transfer claims  
16 contained in the first amended complaint filed by Susan Uecker  
17 ("Uecker"), the Distribution Agent for the Estate of Streamlogic  
18 Corporation ("Debtor"), and that it would require further briefing  
19 by the parties on certain other issues. NATC submitted its  
20 supplemental brief on January 27, 2000; Uecker submitted her  
21 supplemental opposition brief on February 16, 2000. For the  
22 reasons stated below, the court will grant summary judgment in  
23 favor of NATC as to the validity of the trust agreement which is  
24 the subject of these consolidated adversary proceedings. The  
25 court, however, finds that a substantial portion of the fees  
26 requested by NATC and its counsel is unreasonable. The court will  
27 reduce such fees by \$53,460.25.  
28

1 II. FACTUAL BACKGROUND<sup>1</sup>

2 NATC is the successor trustee of the Streamlogic Corporation  
3 Indemnification Trust dated March 29, 1996 (the "Trust"). The  
4 Trust was created to fund obligations of Debtor under individual  
5 Indemnification Agreements between Debtor and certain of Debtor's  
6 directors and officers (the "Indemnitees") to indemnify those  
7 Indemnitees against potential claims based on their acts or  
8 omissions as officers and directors of Debtor. The Trust was  
9 created pursuant to an indemnification trust agreement (the "Trust  
10 Agreement") dated March 29, 1996.

11 The Trust Agreement contains the following relevant  
12 provisions (emphasis added):

13 (6)(a) In the event the Trustee receives  
14 notice of any action, suit or  
15 proceeding challenging the validity  
16 or enforceability of any provision  
17 of this Trust Agreement or the  
18 payment out of the Indemnification  
19 Trust Fund of any Indemnification  
20 Claim, the Trustee shall promptly  
21 give Notice thereof to the  
22 Indemnitees and, upon request  
23 of any Indemnitee or counsel  
24 therefor, shall provide such  
25 information as may be available to  
26 it with respect to such event. Upon  
written instruction from a majority  
of the Indemnitees to such effect,  
the Trustee shall retain legal  
counsel to represent the interests  
of the Indemnitees under this Trust  
Agreement in such action, suit or  
proceeding or to commence and  
prosecute an appropriate action to  
enforce the rights of the Trust.  
All expenses (including fees and  
disbursements of legal counsel)  
reasonably incurred in connection  
with any such action, suit or

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27 <sup>1</sup>The following discussion constitutes the court's findings of  
28 fact and conclusions of law. Fed. R. Bankr. P. 7052(a).

1 proceeding shall be paid out of the  
2 Indemnification Trust Fund.

3 (6)(b) Notwithstanding any other provision  
4 of this Trust Agreement, the Trustee  
5 may suspend payment on any  
6 Indemnification claim, or any other  
7 distribution out of the  
8 Indemnification Trust Fund  
9 contemplated by Section 4 hereof,  
10 and shall be excused from making  
11 such distribution in accordance  
12 herewith, during any period during  
13 which (i) any court or  
14 administrative or executive order is  
15 in effect prohibiting such payment,  
16 even if such order or decree shall  
17 subsequently be reversed or vacated  
18 or held unlawful or (ii) any action,  
19 suit or proceeding challenging  
20 payment on an Indemnification claim  
21 shall be pending and during which  
22 the Trustee, upon advice of counsel,  
23 shall have reasonably determined  
24 that payment on such Indemnification  
25 claim might expose the Trustee to  
26 personal liability.

27 The Trust Agreement also states that the "Trustee shall also  
28 make payments as it deems appropriate out of the Indemnification  
Trust Fund in respect of the expenses of the Trust, including .  
. . the fees of the Trustee, its expenses . . ." The Trust  
Agreement further provides (emphasis added) that ". . . The  
Trustee shall also be entitled to reimbursement of its reasonable  
out-of-pocket expenses incurred in connection with the performance  
of its services as Trustee, including reasonable fees and  
disbursements of legal counsel."

On May 7, 1996, Debtor (then known as Micropolis Corporation)  
issued a proxy statement (the "Proxy Statement") soliciting the  
consent of the shareholders to a sale of substantially all of the  
Debtor's assets and to a change of corporate name. On pages 6, 7,  
and 27 of the Proxy Statement, Debtor disclosed the interest of

1 management in the sale. In particular, on page seven, the Debtor  
2 stated:

3 The Board of Directors has agreed to establish an  
4 Indemnification Trust for the benefit of directors and  
5 certain executive officers and to deposit therein the  
sum of \$500 thousand<sup>2</sup> from the proceeds of the Sale to  
secure the indemnification obligations of the Company to  
such persons.

6 After dissemination of this Proxy Statement, the shareholders  
7 voted to approve the transactions described therein.<sup>3</sup> III.

8 PROCEDURAL BACKGROUND

9 Debtor filed its voluntary Chapter 11 petition in June 1997,  
10 and thereafter notified NATC that it believed that the transfer of  
11 funds to the Trust constituted a fraudulent transfer recoverable  
12 by Debtor as debtor in possession under 11 U.S.C. § 544(b).

13 Around the same time, certain Indemnitees made indemnification  
14 claims against the Trust. NATC retained legal counsel, but has  
15 not produced any evidence that it obtained the prior written  
16 consent of the Indemnitees before doing so. Notwithstanding the  
17 pending bankruptcy of Debtor, NATC filed an action in state court  
18 to obtain instructions as to how to distribute the Trust assets.  
19 Pursuant to paragraph 6(a) of the Trust Agreement, NATC was  
20 excused from making any distribution under the Trust if a  
21 proceeding challenging payment had been commenced. NATC described  
22 Debtor's bankruptcy as such a proceeding in its state court

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23  
24 <sup>2</sup>The Trust was originally funded in the amount of \$500,000,  
25 but was subsequently reduced to \$250,000.

26 <sup>3</sup>NATC has not offered any evidence that the shareholders  
27 approved the sale and name change, but Uecker has not challenged  
28 the assumption that the shareholders did vote in favor of sale and  
name change. The court therefore finds that the shareholders  
approved the transactions described in the Proxy Statement.

1 action. In paragraph 17 of the petition initiating the state  
2 court action, NATC acknowledged its belief that the bankruptcy  
3 filing was "tantamount to a 'proceeding challenging payment on an  
4 Indemnification Claim.'"<sup>4</sup> The state court action was removed to  
5 federal district court and eventually transferred to this court  
6 and is pending as one of the consolidated adversary proceedings.  
7 NATC also filed a separate (but similar) interpleader action in  
8 this court,<sup>5</sup> which is also one of the consolidated adversary  
9 proceedings. The actions commenced by NATC were largely  
10 unopposed.

11 In addition, Uecker filed an action against NATC, the Trust  
12 and certain Indemnitees, alleging, inter alia, that the transfer  
13 of funds to the Trust constituted a fraudulent transfer, that the  
14 Trust is void for failure to obtain proper corporate  
15 authorization,<sup>6</sup> that the defendant Indemnitees breached their  
16 fiduciary duties in creating the Trust, and that the Trust should  
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19 <sup>4</sup>As noted in paragraph 6(b) of the Trust Agreement, such a  
20 proceeding excused NATC from making distributions in accordance  
21 with the agreement.

22 <sup>5</sup>Is in state court action, NATC filed the interpleader action  
23 in an effort to obtain a judicial determination of the proper  
24 distribution of trust assets, even though the Trust Agreement  
itself excused NATC from making any distributions thereunder (see  
footnote 4, supra, and accompanying text).

25 <sup>6</sup> Uecker alleges that Debtor's board of directors failed to  
26 approve the creation of the Trust by the affirmative votes of a  
27 majority of disinterested directors, that the shareholders failed  
28 to approve the creation of and transfer of assets to the Trust,  
that the creation of the Trust and transfer of assets to it was  
unfair to the Debtor as of the time it was authorized, and that  
failure to obtain the requisite corporate authority renders the  
trust void under Delaware law.

1 be terminated.<sup>7</sup> The action filed by Uecker is also one of the  
2 consolidated adversary proceedings.

3 On November 17, 1999, NATC filed a motion for summary  
4 judgment. On December 28, 1999, the court granted the motion for  
5 summary judgment in favor of NATC on the fraudulent transfer  
6 claims. In particular, the court granted summary judgment in  
7 NATC's favor on the first, second, third and fourth claims of  
8 Uecker's first amended complaint. The court requested additional  
9 briefing on whether the Trust is voidable as a matter of law,  
10 whether NATC could nevertheless receive its fees and expenses if  
11 the Trust were declared void, and whether the fees and costs of  
12 NATC and its counsel are reasonable.<sup>8</sup>

13 IV. DISCUSSION

14 A. **The Trust Is Not Void Or Voidable.**

15 Uecker contends that the Trust is void or voidable because  
16 the directors failed to obtain requisite corporate approval and  
17 because the directors breached their fiduciary duties to the  
18 corporation in creating the Trust. While an act arising out of a  
19 breach of fiduciary duty by the directors or officers may be  
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21 <sup>7</sup> See the First Amended Complaint filed by Uecker on November  
22 9, 1999. The First Amended Complaint adds NATC's counsel, Luce,  
Forward, Hamilton & Scripps, LLP ("Luce"), as a defendant.

23 <sup>8</sup>At the last page of her Memorandum of Points and Authorities  
24 in Opposition to Supplemental Motion for Summary Judgment, Uecker  
25 revisited the fraudulent transfer theory previously decided  
26 against her. This time she went after Luce, arguing that it, as  
27 NATC's counsel, is liable as an initial transferee or an immediate  
28 transferee of a fraudulent transfer to NATC. Uecker relies on In  
re Mill Street, Inc., 96 B.R. 268 (9th Cir. BAP 1989). The  
problem is that in Mill Street the liability of a collection  
agency was based upon its retention of a portion of an admittedly  
voidable transfer. Here, because NATC did not receive a voidable  
transfer, its attorney (as agent) cannot be held liable either.

1 voidable,<sup>9</sup> such "voidable acts are susceptible to cure by  
2 shareholder approval." Michelson v. Duncan, 407 A.2d 211, 219  
3 (Del. 1979). Similarly, "a validly accomplished shareholder  
4 ratification relates back to cure otherwise unauthorized acts of  
5 officers and directors." Id.; see also 8 Del.C. § 144(a)(2) (an  
6 interested or self-dealing transaction is not void or voidable  
7 solely for this reason if "the material facts as to the director's  
8 or officer's relationship or interest and as to the contract or  
9 transaction are disclosed [to shareholders], and the contract or  
10 transaction is specifically approved in good faith by vote of the  
11 shareholders." ).

12 Michelson describes the standards for effective shareholder  
13 ratification. "Shareholder ratification is valid only where the  
14 stockholders so ratifying are adequately informed of the  
15 consequences of their acts and the reasons therefor." Michelson,  
16 407 A.2d at 220. "Whether the shareholders were informed, and  
17 thus their ratification valid, turns on the fairness and  
18 completeness of the proxy submitted by the management to the  
19 . . shareholders." Id.

20 In this case, the Proxy Statement disclosed the material  
21 facts relating to creation of the Trust. The Proxy Statement  
22 disclosed at page 21 that after consummation of the sale, "the  
23 company expects to have deficit net worth." The Proxy Statement  
24 also disclosed that the directors and officers nevertheless  
25 intended to use \$500,000 from the sale proceeds to fund a trust

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27 <sup>9</sup>"On the list of voidable acts, i.e., acts performed in the  
28 corporation's interest but beyond management's explicit authority,  
are other acts that may relate to breaches of fiduciary duty."  
Solomon v. Armstrong, 1999 W.L. 182569 at \*8 (Del. Ch. 1999).



1 securing payment of Debtor's indemnification agreements with them.

2 The information regarding the Trust was not placed in an obscure  
3 footnote; rather, it was placed in two sections specifically  
4 entitled "Interest of Management in Sale." A shareholder  
5 reviewing the Proxy Statement therefore received notice of the  
6 existence of and reasons for the Trust; the Proxy Statement  
7 provided notice that the directors and officers would utilize  
8 \$500,000 of the sale proceeds to fund a trust for their benefit,  
9 even though the company would be insolvent following the sale.

10 Uecker has not alleged that the Proxy Statement was  
11 misleading, or that the Proxy Statement substantially omitted  
12 material terms of the Trust. Rather, Uecker argues that the  
13 shareholders did not "specifically" approve the Trust because the  
14 Proxy Statement specifically requested only approval of the sale  
15 and name change. In other words, Uecker contends that a  
16 resolution specifically seeking approval of the Trust should have  
17 been presented separately to the Board. The Proxy Statement,  
18 however, clearly states that the sale proceeds would be utilized  
19 to fund the Trust; the shareholders ratified the sale and  
20 therefore ratified the proposed use and distribution of the  
21 proceeds. The court therefore holds that the shareholders did  
22 ratify the decision of the Board to create the Trust.

23 Because the court finds that the shareholders ratified the  
24 actions of Debtor's officers and directors in creating the Trust,  
25 it concludes that the Trust Agreement is not void or voidable.<sup>10</sup>

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26  
27 <sup>10</sup>Had the court found that the Trust Agreement was void or  
28 voidable, it would have denied any recovery of fees and expenses  
to NATC. NATC failed to present sufficient arguments or legal  
authority to support an award of fees in the event the Trust

1 Consequently, NATC is entitled under the terms of the Trust  
2 Agreement to recover its reasonable fees and costs.

3 **B. NATC's Fees And Expenses Are Unreasonable.**

4 The res of the Trust is only \$250,000 (plus interest), yet  
5 NATC now claims \$103,460.25 in legal fees and \$7,604.81 in  
6 expenses relating to the Trust. It has conceded that this court  
7 can determine the reasonableness of those fees and expenses, and  
8 that after deducting such allowed fees and expenses from the funds  
9 in the Trust, the balance should be paid to Uecker.

10 Under the terms of the Trust, NATC could have suspended  
11 payment on indemnification claims while any action challenging  
12 payment of such claims was pending, where payment of such claim  
13 could possibly expose NATC to personal liability. Uecker filed an  
14 action challenging the validity of the trust and the validity of  
15 the underlying indemnification agreements in August 1998. At that  
16 point, NATC could have simply ceased activity with respect to the  
17 Trust, particularly where an action was already pending wherein  
18 NATC was seeking to obtain judicial instructions regarding  
19 disbursements from the Trust. Instead, according to the time  
20 records of NATC's counsel, NATC incurred approximately \$88,267.43  
21 in fees and expenses after Uecker commenced litigation challenging  
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25 Agreement was declared void or voidable. Rather, NATC contended  
26 that it could recover the fees as a "custodian" under 11 U.S.C. §  
27 543. NATC, however, is not custodian for the purposes of section  
28 543, because it is not acting under court appointment nor  
assignment of creditors, and is not administering the Trust for  
the benefit of creditors. See Camdenton United Super, Inc., 140  
B.R. 523 (Bankr. W.D. Mo. 1992).

1 the validity of any payment to the Indemnitees under the Trust.<sup>11</sup>  
2 Under the terms of the Trust Agreement, services rendered after  
3 commencement of the bankruptcy case (and particularly after  
4 commencement of Uecker's action) were unnecessary, as NATC was  
5 relieved of its obligations to make payments. Moreover, NATC had  
6 not been authorized in writing by a majority of the Indemnitees to  
7 represent their interests under the Trust. Consequently, under  
8 the terms of the Trust Agreement itself, the services rendered by  
9 NATC's counsel after August 1998 were largely unnecessary.

10 Nevertheless, with the consent of Uecker, NATC commenced its  
11 interpleader action, yet another legal action to determine how it  
12 should distribute the proceeds of the Trust. In large part, this  
13 interpleader action was duplicative of the state court action  
14 initiated by NATC. In the interpleader action, the only answers  
15 filed by the Indemnitees disclaimed all interest in the Trust  
16 funds. No other answers were filed by the Indemnitees, and no  
17 discovery ever occurred. Under such circumstances, reasonable  
18 fees for obtaining default judgments should have been no more than  
19 \$5000 to \$7500.

20 The time entries provided by counsel for NATC show that much  
21 of the work performed was duplicative, with two or three (or more)  
22 attorneys performing the same tasks. Many tasks performed by  
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24 <sup>11</sup>Prior to September 1998, NATC had incurred approximately  
25 \$22,797.65 in legal fees and costs, even though the Indemnitees  
26 had not requested in writing that NATC should retain legal counsel  
27 to represent their interests (as required by paragraph 6(a) of the  
28 Indemnification Trust Agreement. Instead, NATC incurred those fees  
just to determine how it should act as Trustee and how it should  
disburse funds. The Trustee could have filed a simple  
interpleader or declaratory action immediately, and the reasonable  
costs of such an action would not have approached \$22,797.65.

1 NATC's counsel were unnecessary, such as the discharge motion that  
2 was later withdrawn by NATC. In addition, from December 1997  
3 through June 1998, counsel used a minimum billing increment of  
4 fifteen minutes; such a large minimum time increment results in  
5 inflated time entries which do not necessarily correspond with  
6 actual time spent on a task. Furthermore, partners performed  
7 associate and clerical tasks at high hourly rates. For example,  
8 the senior partner on the matter spent extensive time updating a  
9 service list, obtaining service on defendants, drafting  
10 stipulations for extension of time, and doing research. While  
11 charging \$310 an hour in 1999, he expended approximately 63.4  
12 hours<sup>12</sup> on matters resulting in defaults of defendants Kamdar and  
13 Kannappan. Other attorneys also billed time with respect to this  
14 particular task, causing total fees related to this task to exceed  
15 \$20,000.

16 While the court does not necessarily agree with Uecker's  
17 contention that NATC's counsel may have simply regarded the Trust  
18 as a "guaranteed" source of fees, it does agree that NATC's  
19 counsel did not exercise reasonable judgment in providing legal  
20 services and in billing for such services. The court believes  
21 that, given the failure of the Indemnitees to assert claims  
22 against the interpleader funds and the lack of written  
23 instructions from the Indemnitees to the Trustee to engage legal  
24 counsel to represent their interests, many of the services

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26 <sup>12</sup>The court calculated these amounts by reviewing specific  
27 time entries appended to that partner's second supplemental  
28 declaration filed on January 27, 2000. Many of the time entries  
were vague as to the nature and purpose of the task being  
performed. Moreover, NATC's counsel did not divide its time  
entries by task, thereby further complicating the court's review.

1 rendered by NATC's counsel were unnecessary and therefore the  
2 charges for them are unreasonable.

3 In determining an amount of fees which would be reasonable  
4 under the circumstances, the court must rely on its experience in  
5 evaluating fee applications submitted for similar services in  
6 other cases. The court was hampered by counsel's failure to  
7 categorize its time by major project; the court cannot easily  
8 ascertain how much time was expended on the state court action as  
9 opposed to the interpleader action as opposed to defense of  
10 Uecker's fraudulent transfer action. In any event, fees exceeding  
11 forty percent of the res of the Trust are unreasonable, especially  
12 in light of the deficiencies just described. The court therefore  
13 looks at the case in its totality and fixes a reasonable fee of  
14 \$50,000, which is twenty percent of the original principal of the  
15 Trust res. The expenses will be allowed as requested.

16 V. CONCLUSION

17 Within ten days of the date of service of this Supplemental  
18 Memorandum Decision Counsel for NATC should submit an order  
19 granting summary judgment, allowing it fees of \$53,460.25 and  
20 expenses of \$7,604.81, and directing turnover of the balance of  
21 the res of the Trust to Uecker.

22 Counsel should comply with B.L.R. 9021-1 and 9022-1 when  
23 submitting the order.

24 Dated: March 27, 2000

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Dennis Montali  
27 United States Bankruptcy Judge  
28